EXHIBIT D

Page 1

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL : MDL NO. 1456

INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION:

PRICE LITIGATION : 01-CV-12257-PBS

THIS DOCUMENT RELATES TO :

U.S. ex rel. Ven-a-Care of : Judge Patti B.

the Florida Keys, Inc. v. : Saris

Abbott Laboratories, Inc., : Chief Magistrate

No. 06-CV-11337-PBS : Judge Marianne B.

- - - - - - - - - - - - - - - - - - - x Bowler

State of California ex rel. :

Ven-a-Care of the Florida Keys, :

Inc. v. Abbott Laboratories, Inc.,:

No. 03-CV-11226 :

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Miami, Florida

Wednesday, May 9, 2007

Videotaped deposition of T. MARK JONES,

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1 in that fashion.

2 Q. Are handwritten notes -- first of all,

3 does Ven-a-Care have any handwritten notes that are

4 kept?

5 A. We do.

6 Q. Are those also Bates stamped and control

7 numbered?

8 A. They are.

9 THE VIDEOGRAPHER: Excuse me. Could we

10 take a 30-second break, please.

11 MR. COOK: Absolutely. Is this a good

12 time for a bathroom break?

13 THE WITNESS: That would be great.

14 THE VIDEOGRAPHER: 10:05 a.m., going off

15 the record, end of Videotape No. 1.

16 (Thereupon, a recess was taken, after

17 which the following proceedings were held:)

18 THE VIDEOGRAPHER: 10:18 a.m. Videotape

19 No. 2. We are back on the record.

20 BY MR. COOK:

21 Q. Mr. Jones, we started describing earlier

22 sort of the business of Ven-a-Care in 1987 and the

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1 documents that generated in the business that you
2 had.
3 Am I correct in assuming that the business
4 of Ven-a-Care remained largely the same from 1987
5 through 1992, or did it change at all?
6 A. It remained largely the same, but it began
7 changing in '91, '92.
8 Q. In what way did it begin changing?
9 A. Well, we got into the lawsuit with three

10 of our physician referral sources. They -- they
11 went -- they brought a proposal to us from an NMC
12 home care ventures company that wanted to do what we
13 were doing, only they wanted to be able to do it
14 also in the physicians' offices.
15 Q. Okay.
16 A. That is what the -- what spurned the
17 lawsuit was we had -- three of the physicians were
18 also shareholders of Ven-a-Care, and we had them in
19 a noncompete, and they sued us based on the
20 noncompete, saying that it was not a legal -- or a
21 legal thing in Florida.
22 Q. And so beginning in 1992, some of the

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efforts of Ven-a-Care were diverted to a lawsuit, I take it?
A. A significant amount.
Q. Once the lawsuit was initiated in 1992 -5
MR. BREEN: Objection to form.
MR. COOK: You are right, I probably have that wrong.
MR. BREEN: I tell you it was '91.
BY MR. COOK:

Q. Once the lawsuit was initiated, how much of your business continued on providing infusion services as it was before?
A. I want to say that it decreased significantly quickly. Statistically, it is hard for me to tell you. Because they opened up their own competing pharmacy, they were able to refer their patients to themselves. So a lot of our patients were lost to them.
Now, we had some patients, and we continued to take care of them. But, no, it was dramatically different. I mean, that was part of our countersuit, you know.

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Q. And so if we measure the volume of Ven-a-Care's business by patients -

A. Uh-huh.

Q. -- it dropped substantially with -- about the time that this lawsuit was initiated with these three physicians?

A. Yeah.

Q. Did it ever pick back up again?

A. No.

Q. And so the records from 1991 or '92 to the present of patient records, those would represent the services that Ven-a-Care was providing to that reduced patient flow; correct?

A. In general. In general. Well, because sometimes we had long-term patients. I mean, there may have been someone that we did for five years, you know.

Q. There may have been someone who was with you before -20

A. Right.

Q. -- and stayed with you after the lawsuit and the diminution in your patient flow?

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1 Fresenius; correct?
2 A. Correct.
3 Q. As I understand it, Ven-a-Care also
4 continued investigatory activity relating to drug
5 pricing issues as well throughout the '90s; is that
6 correct?
7 A. That's correct.
8 Q. My question is, what types of
9 investigatory activities did Ven-a-Care undertake

10 throughout the '90s and into -- after 2000 until
11 today relating to drug pricing?
12 A. Well, I think, to the best of my
13 recollection, the easiest way for me to describe it,
14 in the beginning we started to understand -- I mean,
15 the lawsuit with ImmuneCare, the biggest allegation
16 that I recall, the one that really stuck in my craw
17 was the physicians referring to themselves and
18 splitting the -- splitting the profits with the
19 pharmacy of NMC home care and NMC ventures, whoever
20 the -- I can't remember who their actual venture
21 partner was, you know.
22 Q. Uh-huh.

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1 A. And Zach and I had -- Zach Bentley and I
2 had been up here at a conference just before this
3 happened with Mershon Sawyer, and I don't know if
4 Mershon Sawyer is a law firm that still exists here.
5 And they were actually doing for health care
6 providers a symposia -- symposium on Stark 1 and
7 physician self-referral issues.
8 And we got invited -- I can't remember how
9 it came about that we got invited up. And this was

10 pre the ImmuneCare lawsuit.
11 Q. Uh-huh.
12 A. And we were given information on, you
13 know, things you can do to make sure that you are
14 not put in a position where, you know, a referring
15 physician is construed as being self-referring.
16 And it was just coincidental that just a
17 month or two after we had been here, Dr. Siegel
18 approached us, and I think the date that he actually
19 approached us was August 27th, 1991, it was kind of
20 hard to forget it, and told us that he had a great
21 business plan for us.
22 And, you know, Dr. Siegel is a doctor that

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1 we knew and had worked with. And, actually, my wife
2 and I had socialized with him, and he was a gay
3 doctor, and his partner, John Denitkus, owned
4 probably the most successful medical practice in
5 town at the time, and they were doing most of the
6 HIV care. So we had social ties.
7 And so we were pretty dumbfounded when he
8 came there and gave us the proposal from NMC for
9 ImmuneCare that contemplated, you know, us taking
10 and giving them all of our patients and coming to
11 work for them.
12 And there were, you know, issues in there
13 about the rent, getting paid more rent than what the
14 market -- what the market allowed, and then
15 offered -- and I can't remember the pro formas
16 exactly. We have those, and if they are
17 discoverable, you will certainly see them. Offered
18 to make us millionaires in five years. You know,
19 they wanted to take this and turn it into a
20 prototype outpatient HIV treatment center and turn
21 it into what they had done with the SRD facilities.
22 And Mr. Ham -- Dr. Hamper is who Larry -

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Larry Siegel was an old colleague of his, is the one who approached Larry or Larry approached him and came up with the concept.

What I'm trying to say is Dr. Hamper and Larry were pioneers in developing outpatient end stage renal disease treatment facilities, so they had a history of doing that.

The glitch with us was we would have to give up our autonomy, our business. They were -

the way that they produced the pro formas, they were taking a patient population that we had been servicing for the last few years and tripling or quadrupling the services.

And we were like, you know, where is that coming from? The patient population isn't changing. If anything, it is declining because HIV patients in general were dying. They didn't have the protease inhibitors and the oral therapies that are on the market now that make their lives more of a chronic illness and, you know, increase the quality of it.

That was one of the statements that Dr. Siegel made to us, was, well, we have ways

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of billing -- NMC has ways of billing that you've never heard of. Immediately that piqued our attention, you know.

Q. And so as I understand it, in terms of the investigations that you undertook, part of it was research to determine both, I guess, the legal -

legal basis and educate yourself about the legal basis; correct?

A. Well, we hired Mr. Breen. He represented us, and we started learning, you know, as much as we could.

Q. And you undertook factual investigations, as I understand it, both in that case and in later drug pricing investigations; correct?

A. We did.

Q. Could you tell me, what activities did you undertake as part of your factual investigations in the drug pricing cases?

MR. BREEN: Objection to form. I would also caution the witness that -- and I'm not instructing the witness not to answer, but I will interpose an objection at the appropriate

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1 time if it gets into investigations that were
2 conducted with counsel that may fall under the
3 work product privilege. I'm not going to
4 impose any objection yet, but I will just
5 caution the witness if we get to that point,
6 let me object and then we will discuss it.

7 MR. COOK: Sure.

8 BY MR. COOK:

9 Q. I'm asking now just for general
10 descriptions of what you have done as opposed to the
11 results of the investigation or what you actually
12 learned. But if you can, at a 50,000-foot level,
13 describe sort of what investigations you undertook.
14 A. Off the top of my head, we restarted
15 researching the reimbursement issues. Well,
16 remember -- or let me give you some information.
17 Most of the patients that we took care of
18 were HIV patients, the majority, you know. I want
19 to tell you 90 percent. And the drugs that we were
20 using to treat them were single source drugs. They
21 were drugs that were brand new. I mean, I gave you
22 an example of pentamidine. Well, the other good

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1 example is Cytovene, which is a drug produced by
2 Sentex Labs, for CMV retinitis, which is another -3
which was a really, very opportunistic infection.
4 Many of them were going blind from it.
5 So, I mean, we were even on the level when
6 we first started doing this, doing
7 experimental therapy -- DHPG was the precursor to
8 Cytovene. So we were able to work through our
9 physicians with whomever, whatever pharmaceutical

10 company was sponsoring it.
11 The point is, I'm rambling, that a lot of
12 what we were looking at in drugs were -- were brand
13 named, single source drugs, you know, didn't -- you
14 didn't have opportunities to buy except in
15 certain -- certain ways.
16 Q. Uh-huh.
17 A. So we started looking at all of the drugs.
18 Because one of the drugs that they used in their pro
19 forma was that, and one was IVIG. They were using
20 IVIG, which is a biological drug that is used
21 primarily for autoimmune disorders, say like
22 Guillain-Barre or -- there is a few other, I just

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1 can't recall off the top of my head what their
2 indications were.
3 But they were using doctors -- doctors can
4 off use something off label, you know. And they
5 were using IVIGs on patients to -- to boost their
6 immune system, so to speak. That is the best way I
7 can put it.
8 And that was one of the drugs that, you
9 know, we started looking at, how you can buy it and
10 how you can get reimbursed. And, you know, we
11 called different insurance companies, we talked to
12 different, you know, third party payors. We also
13 would call Medicaid -- not Medicaid, more of their
14 Consult Tech or Unisist, the ones that administered,
15 you know, the payment of claims and the
16 reimbursement part. I don't know. And Florida had
17 either Consult Tech or Unisist. I can't remember.
18 They had both. I can't remember which one at the
19 time.
20 We would call up and give them NDC
21 numbers, and they would give us the reimbursement
22 amount. And we started compiling lists and watching

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what ImmuneCare was doing in prescription, you know, in prescribing out there.

Q. You described on several occasions telephone conversations that you would have as part of your factual investigations.

A. Uh-huh.

Q. Would you keep any record of those telephone conversations?

A. I think we have some handwritten records of telephone conversations. I'm not going to sit here and tell you how many or, you know, where they exist. We kept notes at times, sure.

Q. There would be handwritten notes of your conversations?

A. Yes.

Q. Would you ever do a formal memorandum of a telephone interview?

A. I believe if a formal memorandum was done, it would have been done through our counsel. We would have called, given the information, counsel would have put together a memorandum for us -

Q. Leaving aside counsel preparing something,